IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

RONALD BANKS,	)	
	)	
Employee Below/Appellant	)	
	)	
v.	)	C.A. No. 08A-04-001 WCC
	)	
KCI TECHNOLOGIES,	)	
	)	
Employer below/Appellee.	)	

Submitted: October 10, 2008
Decided: January 30, 2009
Corrected: February 20, 2009

CORRECTED MEMORANDUM OPINION

Appeal from Industrial Accident Board. REVERSED.

Michael I. Silverman, Esquire; Silverman, McDonald & Friedman, 1010 N. Bancroft Parkway, Suite 22, Wilmington, DE 19805. Attorney for Employee Below/Appellant.

William D. Rimmer, Esquire; Cheryl A. Ward, Esquire; Heckler & Frabizzio, 800 Delaware Avenue, Suite 200, P.O. Box 128, Wilmington, DE 19899-0128. Attorneys for Employer Below/Appellee.

CARPENTER, J.

Introduction

Before this Court is Ronald Banks' (the "Appellant") appeal of the Industrial Accident Board's ("IAB" or the "Board") decision, which denied Mr. Banks' Petition to Determine Compensation Due. Upon review of the record in this matter, the Court does not find substantial evidence to support the Board's decision and therefore, the Board's decision is REVERSED.

Facts

The Appellant is an employee of KCI Technologies (the "Employer"). He was involved in a work-related car accident on July 19, 2004 while he was a passenger in a Delaware Department of Transportation ("DelDot") vehicle. On August 20, 2004, the Appellant's attorney sent a letter to the Employer advising it of his representation of the Appellant "in relation to personal injuries he sustained in a work-related automobile accident."[1] The Employer responded on August 30, 2004, explaining that a First Report of Injury had not been submitted to the their human resources department, and that the Appellant had indicated that he did not suffer any injuries from the accident.[2] The Appellant's attorney sent a follow-up letter dated September 21, 2004, stating that the Appellant did sustain injuries to his lumbar spine and "though he is not making a claim for lost wages and DelDot's PIP coverage is affording him payment of his medical expenses, it is still necessary

[1]App. to Opening Br. at Tab 5.

[2]*Id.*

that this claim be acknowledged as a work-related injury."[3] A week or so later, the Employer forwarded to AIG (the Employer's workers' compensation carrier) the Appellant's First Report of Injury that had been submitted on September 27, 2004.[4] On September 29, 2004, AIG sent a notice entitled "Workers' Compensation New Claim Acknowledgement" to the Employer, "confirming receipt of [a] claim."[5] However, the Appellant did not file a petition for compensation until April of 2007, almost three years after the accident.

The Board heard the Appellant's Petition to Determine Compensation Due and held an evidentiary hearing to determine: (1) whether 19 *Del. C.* § 2361(a)'s two-year statute of limitations barred the Appellant's claim and (2) whether the notice provisions of 18 *Del. C.* § 3914 applied to the case. The Board concluded that while the Appellant had reported the accident within the statutory two-year period, there was no evidence that he intended to seek workers' compensation benefits until April 24, 2007. Thus, the Board denied the petition on the basis that it was barred by the two-year statute of limitations and held that the notice requirements of 18 *Del. C.* § 3914 had not been triggered. The Appellant now appeals the Board's decision.

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[3] *Id.*

[4] *Id.*

[5] *Id.*

Standard of Review

This Court's role in reviewing an appeal from an administrative agency is limited.[6] The Court will only evaluate the record, in the light most favorable to the prevailing party below, to determine if substantial evidence existed to reasonably support the Board's conclusion and to ensure that it is free from legal error.[7] "Substantial evidence" is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[8] Thus, the Court does not address issues of credibility nor does it independently weigh the evidence presented to the Board.[9] If the record supports the Board's findings, the Court must accept those findings even if the Court might have reached a different conclusion based on the facts presented.[10]

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[6] *Zicarelli v. Boscov's Dep't Store, LLC*, 2008 WL 3486207, at *2 (Del. Super. June 5, 2008).

[7] *Id.*

[8] *Del. Alcoholic Beverage Control Comm'n v. Newsome*, 690 A.2d 906, 910 (Del. 1996) (citing *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

[9] *Michael A. Sinclair, Inc. v. Riley*, 2004 WL 1731140, at *2 (Del. Super. July 30, 2004) (citing *Unemploy. Ins. App. Bd. v. Div. of Unemploy. Ins.*, 803 A.2d 937 (Del. 2002)).

[10] *Anderson v. Comfort Suites*, 2004 WL 304359, at * 2 (Del. Super. Feb. 12, 2004) (explaining that "[a]bsent an abuse of discretion, this Court must uphold the Board's decision.") (citing *Oceanport Ind., Inc. v. Wilmington Stevedores, Inc.*, 636 A.2d 892, 899 (Del. 1994)).

Discussion

The question before the Court is whether the Board had substantial evidence to find: (1) that the two-year statute of limitations barred the Appellant's claim and (2) that the Employer had no duty to notify the Appellant of the statute of limitations. The Court finds that the Board did not have substantial evidence to reach this conclusion.

a. Statute of Limitations

Under 19 *Del. C.* § 2361(a), an employee who sustains injuries from a work-related accident has two years from the date of the accident to perfect their claim for workers' compensation.[11] Much of the argument between the parties focuses on whether the letters the Appellant's attorney sent to the Employer were sufficient to constitute a "claim" within the meaning of 19 *Del. C.* § 2361(a).

The parties, however, ignore the fact that on September 29, 2004, AIG forwarded a document called "Workers' Compensation New Claim

[11] 19 *Del. C.* § 2361(a) (2009). The statute states in pertinent part: "In case of personal injury, all claims for compensation shall be forever barred unless, within 2 years after the accident, the parties have agreed upon the compensation as provided in § 2344 of this title . . . ."; *see also Rose v. Cadillac Fairview Shopping Ctr. Props. (Del.) Inc.*, 668 A.2d 782, 790 fn.5 (Del. Super. 1995) (explaining that "the time period does not begin to run until the claimant, as a reasonable person, should recognize the nature, seriousness, and *probable compensable character* of the injury."), *aff'd sub nom. Rose v. Sears, Roebuck & Co.*, 1996 WL 145782 (Del. Feb. 23, 1996).

Acknowledgement" to the Employer once AIG had received the First Report of Injury.[12] Thus, for the purposes of this appeal, it is irrelevant to determine whether the correspondence from the Appellant's attorney amounted to a "claim." It is clear from AIG's acknowledgement form that both the insurer and the Employer had notice that the Employee had been injured in an accident and the Employee had completed the necessary form to initiate a claim. While the claim may not have been perfected to the point where benefits were being requested, this does not change the fact that the insurance company created claim no. 009-113689 as to this event.

b. The Notice Requirement of 18 *Del. C.* § 3914

Having found that a claim has been initiated, the Court must now address the effect of 18 Del. C. § 3914 on the Employer's statute of limitation argument. Section 3914 outlines when and under what circumstances a claimant must be notified of the statute of limitations:

> An insurer shall be required during the pendency of any claim received pursuant to a casualty insurance policy to give prompt and timely written notice to claimant informing claimant of the applicable state statute of limitations regarding action for his/her damages.[13]

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[12]App. at Tab 5.

[13]18 *Del. C.* § 3914 (2009); *see also* 19 *Del. C.* § 906(a)(3) (2009) (stating that workers' compensation and employer's liability insurance fall within the ambit of "casualty insurance").

Because the Court has concluded that the Employer and their insurer received notice of the Appellant's claim, the Appellant should have received notice of the statute of limitations pursuant to 18 *Del. C.* § 3914. Since there is no dispute this did not occur, the Employer is therefore precluded from raising the expiration of the statute of limitations as a defense.

Moreover, had the Employer properly filed the First Report of Injury in Delaware, where the accident had occurred, there again appears to be no disagreement that the notice of the statute of limitations would have been provided to the Appellant as required under Delaware law.[14] However, according to the testimony of AIG's claims adjuster, the First Report of Injury was only filed in Maryland, where the Employer's home office is located. As such, they attempt to argue that since there is no similar 3914 notice obligation in Maryland, the section is not applicable.[15] However, under 19 *Del. C.* § 2313(a), an employer is required to "keep a record of all injuries . . . received by employees in the course of their employment" and must report those injuries to the Department of Labor.[16] This reference to the Department of Labor is clearly meant to mean Delaware's Department of Labor, and given that the Employer has an office in Delaware and

[14]*See* 18 *Del. C.* § 3914.

[15]Hr'g Tr. 37:15-17.

[16]*Id.*

the accident occurred in Delaware, a report should have been filed in Delaware. If the Employer had followed the correct procedure, the Employee's notice rights would have been clear.

Considering all of these factors, the Court finds that there is not substantial evidence in the record to support the Board's decision.

Conclusion

For the foregoing reasons, the decision of the Board is REVERSED.

IT IS SO ORDERED

Judge William C. Carpenter, Jr.